



## Notice of Lodging of Proposed Consent Decree under the Clean Water Act

On September 7, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Hampshire, in a lawsuit entitled *United States v. State of New Hampshire and New Hampshire Fish and Game Department*, Civil Action No. 1:18-cv-00996-PB.

The United States filed this lawsuit under sections 301(a), 309(b), and 504 of the Clean Water Act (“CWA”), 33 U.S.C. 1311(a), 1319(b), 1364, against the State of New Hampshire and the New Hampshire Fish and Game Department (“NHF&G”), in connection with discharges of pollutants from the Powder Mill State Fish Hatchery, in New Durham, New Hampshire (the “Hatchery”). The Hatchery is owned by the State and operated by NHF&G. The Complaint asserts two claims for injunctive relief. The first claim alleges that the State and NHF&G violated a National Pollutant Discharge Elimination System permit (Permit No. NH0000710; the “Permit”), issued by EPA under section 402 of the CWA, 33 U.S.C. 1342, by exceeding its narrative and numeric discharge limits for total phosphorus and pH, in violation of CWA section 309(b), 33 U.S.C. 1319(b). The second claim alleges that such discharges have caused or contributed to contamination, eutrophication, and the growth of toxic cyanobacteria in the Merrymeeting River and its impoundments, known as Marsh, Jones, and Downing Ponds, which poses an imminent and substantial endangerment to human health and welfare, in violation of CWA section 504, 33 U.S.C. 1364.

Under the proposed consent decree, NHF&G must implement measures designed to bring the Hatchery into compliance with the CWA and the Permit by the end of 2025. These measures include constructing and operating new wastewater treatment systems and upgrading other aspects of the Hatchery’s facilities and operations, and implementing best management practices related to flow, pH, and phosphorus, such as adding a neutralizing agent, reconfiguring facility tanks to promote the settling of solids containing phosphorus, and increasing the frequency of

removal of these solids. The proposed consent decree also requires NHF&G to perform a phosphorus assessment and remediation options study for the Merrymeeting River and its impoundments.

The United States filed its complaint as plaintiff-intervenor in a civil action initiated in 2018 by the Conservation Law Foundation (“CLF”), under the CWA’s citizen-suit provision, 33 U.S.C. 1365, entitled *Conservation Law Foundation v. Scott Mason, Executive Director of NHF&G, et al.*, Civil Action No. 1:18-cv-00996-PB. In that action, CLF asserted CWA claims arising from the same or similar circumstances as those that gave rise to the United States’ claims. In addition to resolving the United States’ claims, the proposed consent decree resolves CLF’s claims in this related action.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. State of New Hampshire and New Hampshire Fish and Game Department*, D.J. Ref. No. 90-5-1-1-12466. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. Paper copies of the consent decree are available upon written request and payment of reproduction costs. Such requests and payments should be addressed to:

U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, D.C. 20044-7611.

With each such request, please enclose a check or money order for \$12.75 (25 cents per page reproduction cost) per paper copy, payable to the United States Treasury.

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